

46 Am. Jur. 2d Judges § 126

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

a. Bias or Prejudice as Grounds for Disqualification, in General

§ 126. Statutes, rules, or constitutional provisions providing for disqualification of judge because of bias or prejudice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

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[Disqualification of federal judge, under 28 USC sec. 144, for acts and conduct occurring in courtroom during trial or in ruling upon issues or questions involved, 2 A.L.R. Fed. 917](#)

In some jurisdictions, statutes provide for the disqualification of judges who are biased or prejudiced for or against a party.¹ Other statutes provide that a judge may not preside in a case if the judge could be excluded as a juror for bias,² that a judicial officer may not act in a matter in which the judicial officer feels that, for any reason, a fair and impartial decision cannot be given,³ or that a judge may be disqualified where the judge is biased to such an extent that the judge would be unable to conduct a fair and impartial proceeding.⁴ Pursuant to the federal statute regarding disqualification, the judge must disqualify him- or herself where the judge has a personal bias or prejudice concerning a party.⁵

Practice Tip:

A federal statute provides that whenever a party to any proceeding in a federal district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against the party or in favor of the party's adversary, the judge must proceed no further, and another judge will be assigned to hear the proceeding. The affidavit must state the facts and reasons for the belief that bias or prejudice exists, and must be accompanied by a certificate of the counsel of record stating that it is made in good faith.⁶

The Code of Judicial Conduct provides that a judge must disqualify him- or herself in any proceeding in which the judge has a personal bias or prejudice concerning a party or a party's lawyer.⁷ The canons or rules of virtually all states provide for disqualification on the basis of personal bias or prejudice concerning a party.⁸

Some state constitutions specifically guarantee every criminal defendant that a trial judge may not entertain a personal prejudice against such a defendant,⁹ or that disqualification is required where judicial bias denies a defendant due process of law.¹⁰ A constitutional provision that justice will be administered without prejudice prohibits a judge who has bias or prejudice in a case from trying it. Such a provision is self-executing, and the fact that bias or prejudice is not enumerated among the statutory grounds of disqualification is immaterial.¹¹

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Footnotes

- 1 [Greenway v. Heathcott](#), 294 P.3d 1056 (Alaska 2013); [Earles v. Ahlstedt](#), 591 So. 2d 741 (La. Ct. App. 1st Cir. 1991); [In re Disqualification of Spitler](#), 142 Ohio St. 3d 76, 2014-Ohio-5875, 28 N.E.3d 67 (2014); [State v. Belgarde](#), 119 Wash. 2d 711, 837 P.2d 599 (1992); [Osborn v. Manning](#), 812 P.2d 545 (Wyo. 1991).
- 2 [Matter of Welfare of D.L.](#), 486 N.W.2d 375 (Minn. 1992).
- 3 As to the challenge of a juror on the basis of bias or prejudice, generally, see [Am. Jur. 2d, Jury §§ 230 to 249](#).
- 4 [Perotti v. State](#), 806 P.2d 325 (Alaska Ct. App. 1991).
- 5 [Earles v. Ahlstedt](#), 591 So. 2d 741 (La. Ct. App. 1st Cir. 1991).
- 6 28 U.S.C.A. § 455(b)(1).
- 7 As to the disqualification of a judge for personal bias or prejudice concerning a party under 28 U.S.C.A. § 455(b)(1), see [Am. Jur. 2d, Federal Courts §§ 75 to 88](#).
- 8 28 U.S.C.A. § 144.
- 9 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(1).
- 10 [Sibley v. St. Albans School](#), 134 A.3d 789, 330 Ed. Law Rep. 193 (D.C. 2016); [Barnett v. State](#), 300 Ga. 551, 796 S.E.2d 653 (2017), cert. denied, 137 S. Ct. 2279 (2017); [Idaho Department of Health and Welfare v. Doe](#), 161 Idaho 660, 389 P.3d 946 (2016); [Rossberg v. State](#), 874 N.W.2d 786 (Minn. 2016); [Anderson v. State](#), 402 S.W.3d 86 (Mo. 2013); [Matter of Wolters](#), 168 N.H. 150, 123 A.3d 1008 (2015).
- 9 [Arnold v. State](#), 1990 OK CR 78, 803 P.2d 1145 (Okla. Crim. App. 1990).
- 10 [Crawford v. State](#), 719 S.W.2d 240 (Tex. App. Eastland 1986).

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[Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 \(1946\).](#)

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